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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,116	12/05/2000	Robert Manuel Carmichael	10464.6803	8544

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EXAMINER

VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/730,116	CARMICHAEL, ROBERT MANUEL	
	Examiner	Art Unit	
	Ajay Vasudeva	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-21 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. The applicant has withdrawn the statement claiming a priority to the '836 application because the claim for an earlier priority date was held invalid.

However, the applicant must specifically amend the specification as follows:

On page 1 (line 1), delete -- **This application is a continuation-in-part of U.S. Patent Application Serial No. 09/628,836, filed July 31, 2000 -- .**

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

3. Claims 14 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US 5,944,450 A).

Anderson shows an active control releasable ballast system (figure 3) having a ballast receiving pocket [30], a ballast containing pouch [34], and a release system comprising first and second sections [82, 84]. Because the ballast system is capable of being released by use of a

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strong pulling force on the first section 82 when the buckle section 84 is not engaged, it is considered as satisfying the limitations of the claims.

4. Claims 1-8 and 12-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Angelini et al. (US 6,527,480 B2).

Angelini et al. shows an active control releasable ballast system having a ballast receiving pocket [38], a ballast weight [54] stored in a pouch [40], and retaining system comprising first and second straps [70, 74]. A handle [76] is attached to one of a pouch and the ballast weight for its removal from the receiving pocket.

It is noted that the '480 reference is a different inventive entity, and is not co-owned.

5. Claims 1-8 and 12-21 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Claims 1-8 and 12-21 are rejected in view of the invention having been made by a different inventive entity, as has been disclosed in the application no. 09/628,836 ('836).

As noted in the previous Office Actions, the '836 application:

- (i) discloses the exact invention as being claimed in the present application,
- (ii) has a different inventive entity, and additionally,
- (iii) has no common inventors with the present application.

Specifically, the '836 application discloses a ballast receiving pocket [38], a ballast weight [54] stored in a pouch [40], and retaining system comprising first and second straps, exactly as being claimed in the instant invention. The full disclosure of the '836 application can be seen as incorporated in the continuing US application no. 09/916,414, now US Patent No. 6,527,480 cited in this Office Action.

Allowable Subject Matter

6. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Rejection of claims 1-8 and 12-21 under 35 U.S.C. 102 (e) as well as 102(f):

In order to overcome the rejection, the applicant has submitted the following:

- (i) a declaration (hereby Carmichael declaration) by the applicant under 37 CFR 1.131, and
- (ii) a supporting affidavit by Mr. Joseph Stella (hereby Stella affidavit), whose company is the assignee of record in the '836 application (and US Patent # 6,527,480) that was applied for a rejection under 102(f).

The declaration filed on 8/03/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the '836 reference (or Patent # 6,527,480) due to the following reasons:

(A) The evidence submitted in the Carmichael declaration lacks proper showing of facts, and therefore, is insufficient to establish a conception of the invention, diligence, or alleged actual reduction to practice prior to the effective date of the above-mentioned reference. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration, or their absence satisfactorily explained.

Note: See MPEP 2137. Also see MPEP 715 (II)(H) for guidance regarding situations where the 1.131 declaration is considered inappropriate.

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(B) The Stella affidavit discusses a quick disconnect release system, with reference to Exhibits A through Exhibit E. However, no copies of the discussed exhibits have been provided. In absence of such exhibits, it is not clear which invention is being discussed by Mr. Stella – whether or not it is the same invention as being discussed the applicant.

(C) The effectiveness of the applicant's declaration is also doubtful in view of contradictory declarations by the applicant. It is noted that the applicant had signed a sworn statement in the application SN 09/916,414, stating that he was the co-inventor of the invention. However, in the present declaration, the applicant now states that he is the sole inventor of the same invention. Further explanation is required.

Conclusion

8. The prior art made of record in the attached PTO Form 892, but not yet relied upon, is considered pertinent to applicant's disclosure:

GB '870 anticipates at least claims 14 and 21.

9. This is a Non-Final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992. The examiner can normally be reached on Monday-Friday 1:00 pm--5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AV

AV

Ajay Vasudeva
Examiner
Art Unit 3617



S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
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